IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 701 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIVISIONAL CONTROLLER G S R T C - Petitioner(s)
Versus
CHETANBHAI MANCHABHAI PATEL - Respondent(s)

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Appearance :
MR HS MUNSHAW for Petitioner(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 1,
MR PRABHAKAR UPADYAY for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 14/06/2006

ORAL JUDGMENT

1. Heard the learned advocate Mr. H.S. Munshaw appearing on behalf of the petitioner and learned advocate Mr. Prabhakar Upadhyay appearing on behalf of the respondent – workman.

2. In the present petition, petitioner Corporation has challenged the award passed by the Labour Court, Surat in Reference (L.C.S.) No.239 of 1997 dated 12th may 2005. The Labour Court has set aside the dismissal order and granted 90% back wages for the period from 20th September 1996 to 31st December 1997 and also retirement benefits in favour of the respondent workman. This Court has issued notice to the respondent, meanwhile, back wages has been stayed.

3. Rule. Learned advocate Mr. Upadhyay waives service of notice of rule on behalf of the respondent. With the consent of both the learned advocates appearing on behalf of the respective parties, matter has been taken up for final hearing today.

4. Learned advocate Mr. Munshaw has submitted that respondent workman was working as Watchman remained absent without prior permission of Authority. He also submitted that repeated notices were served to remain present to the respondent, but, respondent workman has not reported for work. Therefore, according to him, sufficient opportunity was given to the respondent to report for work. But, respondent

had not resumed the duty. Therefore, charge-sheet was served to the workman and after completion of departmental inquiry, dismissal order dated 20th September 1996 was passed by the competent authority. The respondent workman has not filed any departmental appeal and straightway raised the industrial disputes before the Labour Court. He submitted that the Labour Court has come to the conclusion that departmental inquiry is legal and valid and finding has been accepted. Therefore, charge levied against the workman was found to be proved. However, Labour Court has exercised the power under Section 11-A of the Industrial Disputes Act. During the pendency of Reference, respondent workman has reached the age of superannuation on 31st December 1997. Therefore, Labour Court has granted 90% back wages of the interim period from the date of dismissal till the date of retirement. Learned advocate Mr. Munshaw submitted that if Labour Court while exercising the power under section 11-A set aside that dismissal order is unjustified then Labour Court has jurisdiction to pass appropriate order, but, he submitted that 90% back wages has been granted then there is no punishment to the workman when charge is found to be proved against the workman. Therefore, he submitted that Labour Court has committed gross error in granting 90% back wages of interim

period while exercising the powers under Section 11-A of the Industrial Disputes Act, 1947.

5. Learned advocate Mr. Upadhyay submitted that Labour Court has rightly exercised the power under Section 11-A of the Industrial Disputes Act, 1947. He also submitted that looking to the gravity of misconduct and past record and length of service, Labour Court has rightly exercised the power under Section 11-A of the Industrial Disputes Act, 1947. He submitted that respondent – workman had completed more than 22 years service and it was a first misconduct against the workman in which he was dismissed. Therefore, accordingly to him, Labour Court has granted 90% back wages and not granted full back wages of interim period which amounts to punishment to the workman concerned. He further submitted that workman has already reached the age of superannuation on 31st December 1997 and now, only question of 90% back wages of 15 months remain. He also submitted that it is not a much amount which requires to be paid by the Corporation and therefore, according to him, Labour Court has not committed any error which requires interference by this Court.

6. I have considered the submissions made by both the learned advocates appearing for the

respective parties. I have perused the award passed by the Labour Court. The workman was remained absent from 9th April 1996 to 27th May 1996. The charge-sheet dated 22.7.1996 was served to the workman, however, workman was not remained present in departmental inquiry, Therefore, in absence of workman, departmental inquiry was completed. Thereafter, show cause notice fort he punishment dated 23rd August 1996 was served to the respondent workman, but respondent workman had not given any reply. Ultimately, on the basis of record, competent authority has passed the dismissal order. The respondent workman has admitted the legality and validity of inquiry and only evidence was given for back wages by the workman and on behalf of the petitioner – Corporation, no oral evidence led before the Labour Court. The Labour Court has decided the Issue No.1 and Issue No.2 on the ground that period of absent from 9th April 1996 to 27th May 1996 about more than 47 days remaining absent without appropriate permission. It is important fact that during the course of departmental inquiry, from charge-sheet to show cause, respondent workman has not filed any reply or made any explanation before the authority that why he remained absent for the aforesaid period. Therefore, considering this aspect, Labour Court has come to the conclusion that finding given by

the competent authority is legal and valid and charge levied against the workman is found to be proved. Now, only question is that whether punishment of dismissal in light of gravity of misconduct is justified by the petitioner Corporation or not. That aspect has been examined by the Labour Court considering the fact the length of service of 22 years, first misconduct according to past record and workman remained unemployed during the interim period and there was no evidence led by the petitioner before the Labour Court to prove gainful employment of respondent workman. Therefore, according to the Labour Court, the punishment of dismissal is unjustified and harsh. Therefore, workman is entitled for the reinstatement in service, but, workman has reached the age of superannuation, in between, Labour Court has granted 90% back wages of interim period. It is necessary to note that on what basis, the Labour Court has granted 90% back wages. For that, no reasons have been given by the Labour Court. The power under Section 11-A is a discretionary power that Labour Court can pass appropriate orders, but that does not mean that Labour Court should not give any reason in respect of its conclusion. Looking to the award, Labour Court has granted 90% back wages, but, there is no reason given in respect of its conclusion, therefore, the figure of 90% has no

rational base to grant the back wages of the interim period.

7. In light of this, I am considering the mater whether workman is entitled for any amount of back wages for interim period or not. Considering the fact that after receiving the charge-sheet, no reply was filed by the workman. After receiving the repeated notices to report for duty, not reported for work, not remained present in departmental inquiry. No reply was given to the show cause notice. No explanation given by the workman any he remains absent for the aforesaid period, therefore, these are the factors which required to be taken into account by the Labour Court which has not been taken into account while deciding figure of back wages.

8. In light of aforesaid observation and considering the length of service of 22 years and gravity of misconduct and no bad past record, according to my opinion, if both the aspects have been taken into account then workman is entitled 50% back wages of interim period which will meet the end of justice between the parties.

9. In light of above observation, the award passed by the Labour Court in Reference (L.C.S.) NO.239 of 1997 dated 12th May 2005 is required to

be modified to the effect that instead of workman is entitled of 90% back wages, now, it reduced to 50% of back wages of interim period. The direction given by the Labour Court to pay the retirement benefits to the workman is remained intact.

10. In result, present petition is partly alloed, award passed by the Labour Court, Surendranagar in Reference (L.C.S.) No.239 of 1997 dated 12th May 2005 is hereby modified to the effect that petitioner – Corporation shall have to pay 50% of back wages for the period from 20th September 1996 to 31st December 1997. The petitioner – Corporation shall have to pay all the retirement benefits to the respondent – workman as if that dismissal order has never been passed against the respondent – workman. It is directed to the petitioner – Corporation to pay 50% back wages as ordered by this Court to the respondent – workman within a period of two months from the date of receiving the copy of the said order. It is further directed to the petitioner Corporation to calculate all the retirement benefits including the provident fund, gratuity and other service benefits which are available to the respondent – workman according to the service regulation as if respondent – workman remained continue in service up to 31st December 1997 and whatever the salary

is to be fixed by the Corporation. All the benefits should have to be paid on that basis to the respondent – workman within a period of four months from the date of receiving the copy of the said order.

11. In result, petition is partly allowed. Rule is made absolute accordingly. No order as to costs.

[H.K. RATHOD, J.]

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